

NEW JERSEY DEPARTMENT OF
COMMUNITY AFFAIRS



Local Bond Law

N.J.S.A. 40A:2-1 et seq.

(Current as of September 2003)

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40A:2-1. Short title

This chapter may be cited as the "Local Bond Law".

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-2. Definitions

The following words as used in this chapter shall have the following meanings, unless the context clearly indicates a different meaning:

"bond ordinance" means an ordinance adopted as herein provided by the governing body of a local unit authorizing obligations;

"equalized valuation basis" of a local unit means the average for the last 3 preceding years, of the sum total of

a. the aggregate equalized valuation of real property together with improvements, as certified in the Table of Equalized Valuations by the Director of the Division of Taxation in the Department of the Treasury, on October 1 of each year, pursuant to chapter 86 of the laws of 1954, and

b. the assessed valuation of Class II railroad property as set forth in the table of equalized valuations referred to in "a" above.

"governing body" means the board of chosen freeholders of a county, or the commission, council, board or body having control of the finances of a municipality;

"local improvement" means an improvement or property, part or all of the cost of which has been, or is to be specially assessed on property;

"obligations" means bonds or notes of a local unit;

"refunding bond ordinance" means an ordinance adopted by the governing body of the local unit authorizing refunding bonds.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962. Amended by L.1964, c. 72, s. 1.

40A:2-3. Power to incur indebtedness, borrow money, issue bonds

Any local unit, by bond ordinance, may incur indebtedness, borrow money, authorize and issue negotiable obligations for financing:

a. any capital improvement or property which it may lawfully make or acquire;

- b. any purpose for which it is authorized or required by law to make an appropriation, except current expenses and payment of obligations (other than those for temporary financing); or
- c. the amount of any contribution by a local unit that is a sending municipality under a regional contribution agreement pursuant to section 12 of P.L.1985, c.222 (C.52:27D-312).

No local unit shall borrow money or issue its obligations for purposes authorized under this chapter except as provided in this chapter.

Amended 1996, c.113, s.9.

40A:2-4. Payment of obligations

The power and obligation of a local unit to pay any and all bonds and notes issued by it pursuant to this chapter, or any act of which this chapter is a revision, shall be unlimited, and the local unit shall levy ad valorem taxes upon all the taxable property within the local unit for the payment of the principal of and interest on such bonds and notes without limitation as to rate or amount.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-5. Authorization as appropriation

An authorization of obligations shall constitute an appropriation of the proceeds thereof for the purposes stated in the bond ordinance.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-6. Debt limitation

No bond ordinance shall be finally adopted if it appears from the supplemental debt statement required by this chapter that the percentage of net debt as stated therein pursuant to 40A:2-42 exceeds 2.00%, in the case of a county, or 3 1/2 %, in the case of a municipality.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962. Amended by L.1964, c. 72, s. 2.

40A:2-7. Exceptions to debt limitation

A bond ordinance may be finally adopted notwithstanding section 40A:2-6 if such ordinance authorizes obligations solely for one of the following:

- a. to meet an expenditure which is the result of fire, flood or other disaster and if the local government board shall have determined that the expenditure is of such character, and shall have caused such determination to have been endorsed on a certified copy of the bond ordinance as passed on first reading; or
- b. to fund, renew, extend or retire notes issued or authorized pursuant to this chapter or any act of which this chapter is a revision; or
- c. purposes permitted by this chapter if (1) it has been found by order of the State Department of Health, which is hereby authorized to make such order in a proper case, that the expenditure and every part thereof is necessary to protect the public health and to prevent or suppress a present menace to the public health of sufficient gravity to justify the incurrence of debt in excess of statutory limitations, and that no less expensive method of preventing or suppressing such menace exists; and (2) the principal amount of such obligations is not in excess of the amount determined by the local government board to be necessary therefor and the local government board shall have caused such determination to be endorsed on a certified copy of the bond ordinance as passed on first reading; or
- d. purposes permitted by this chapter, if the local government board shall have caused its consent to be endorsed upon a certified copy of the bond ordinance as passed upon first reading, which consent said local government board shall cause to be so endorsed thereon, if it shall be satisfied and shall have determined that each of the purposes or improvements for which such obligations are authorized are in the public interest and are for the health, welfare, convenience or betterment of the inhabitants of such local unit, and that the amounts to be expended for each of the purposes or improvements to be financed pursuant to such bond ordinance are not unreasonable or exorbitant and that the issuance of such obligations will not materially impair the credit of such local unit or substantially reduce its ability to pay punctually the principal of and interest on its debts and to supply other essential public improvements and services; or
- e. purposes permitted by this chapter when the expenditure is to be made for constructing or reconstructing dikes, bulkheads, jetties or similar devices to prevent the encroachment of the sea, and if the local government board shall have determined that an emergency exists or is threatened which makes necessary the construction or reconstruction of such dikes, bulkheads, jetties or other devices for the preservation of life or property;
- f. purposes permitted by this chapter if the amount of such obligations does not exceed in the aggregate (1) the amount available, if any, for the issuance of obligations by the local unit upon the effective date of this chapter pursuant to section 40:1-16(d) of the Revised Statutes, less (2) the amount of other obligations authorized prior to the adoption of such bond ordinance pursuant to paragraphs d, f and g of this section; or
- g. purposes permitted by this chapter if the amount of such obligations and all other obligations authorized pursuant to this subsection during the current fiscal year does not exceed an amount equal to 2/3 of the amount of obligations (exclusive of utility and

assessment obligations) for the payment of which an appropriation was made in the budget of the local unit for the current fiscal year, plus 2/3 of the amount raised in the tax levy of the current fiscal year by the local unit for the payment of bonds or notes of any school district;

h. purposes which are self-liquidating, if such obligations are deductible from gross debt.

L.1960, c. 1969, s. 1, eff. Jan. 1, 1962. Amended by L.1964, c. 72, s. 3.

40A:2-8.1 Issuance of bond anticipation note; rules, regulations.

On and after the effective date of P.L.2003, c.15, a local unit may, in anticipation of the issuance of bonds, borrow money and issue notes if the bond ordinance or subsequent resolution so provides. Any such note shall be designated as a "bond anticipation note" and shall contain a recital that it is issued for a period not exceeding one year and may be renewed from time to time for additional periods, none of which shall exceed one year, but all such notes, including renewals, shall mature and be paid not later than the first day of the fifth month following the close of the tenth fiscal year next following the date of the original notes; provided, however, that no such notes shall be renewed beyond the third anniversary date of the original notes unless an amount of such notes, at least equal to the first legally payable installment of the bonds in anticipation of which those notes are issued, is paid and retired on or before each subsequent anniversary date beyond which such notes are renewed from funds other than the proceeds of obligations.

The local finance board shall, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt such rules and regulations as are necessary to implement the provisions of this act.

L.2003,c.15,s.11.

40A:2-9. Interim obligations

After the sale of obligations, and pending the preparation of the definitive obligations, a local unit may issue interim obligations to the purchasers of such obligations. The definitive obligations, when prepared, may be delivered to the holders of such interim obligations in exchange therefor.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-10 Filing of supplemental debt statement required.

Prior to the passage on first reading of any bond ordinance, refunding bond ordinance or ordinance amending such ordinance, except amending as to matters which are not required to be contained in such ordinance or which does not increase the total amount of the obligations authorized by such ordinance, a financial officer of the local unit shall execute and swear to a

supplemental debt statement which shall be filed in the office of the clerk. Prior to the final passage of such ordinance, an executed duplicate of such statement shall be filed in the office of the director.

Amended 2003, c.15, s.1.

40A:2-11 Down payment.

a. No bond ordinance shall be finally adopted unless it appropriates to the purpose, or ratably to the respective purposes to be financed, in addition to the obligations thereby authorized, a sum as a down payment which is not less than 5% of the amount of the obligations authorized.

b. Said sum so appropriated as a down payment must have been made available prior to final adoption of the bond ordinance from any one or more of the following:

1. by provision in a previously adopted budget or budgets of the local unit for down payment or for capital improvement purposes;
2. from moneys then actually held by the local unit and previously contributed for such purpose other than by the local unit; or
3. by emergency appropriation.

c. The provisions of this section shall not apply to a bond ordinance which authorizes obligations solely for any purpose referred to in paragraphs a, b, c, d, e and h of section 40A:2-7 or for those bond ordinances which involve projects funded by State grants such as Green Acres, Environmental Trust Fund, Transportation Trust Fund, and other similar programs.

Amended 2003, c.15, s.2.

40A:2-12 Bond ordinance; contents

A bond ordinance shall contain in substance the following:

- a. (1) an authorization for the issuance of obligations, stating in brief and general terms sufficient for reasonable identification the purpose or purposes for which the obligations are to be issued, a statement of the estimated maximum amount of bonds or notes to be issued, and the estimated cost of such purpose or purposes, but related improvements or properties may be treated as one improvement or property; or
- (2) an authorization for the assumption by the local unit of the obligations of the authority sought to be dissolved pursuant to section 20 of P.L.1983, c.313 (C.40A:5A-20) for which the local unit is not a guarantor;

b. a determination of the period of usefulness of the purpose within the limitations of this chapter or, if issued for several purposes, a determination of the average period of usefulness, taking into consideration the respective amounts of obligations authorized for the said several purposes;

c. a determination that (1) the supplemental debt statement has been filed in the office of the clerk, (2) such statement shows that the gross debt as defined in this chapter is increased by authorization of such obligations by \$ or is not increased, and (3) the obligations authorized by the bond ordinance will be within debt limitations prescribed by this chapter, or the issuance thereof is permitted by an exception to said limitations naming the particular section, paragraph or law providing such exception;

d. a statement of the aggregate amount for items of expense permitted under 40A:2-20.

Amended 2001, c.29, s.2.

40A:2-13. Multipurpose bond ordinances

Any 2 or more purposes for which this chapter authorizes obligations may be provided for in a single bond ordinance and may be combined in a single issue of obligations.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-14. Local improvement obligations

a. Any bond ordinance to finance any local improvement, in addition to other required provisions, shall contain:

1. a determination of the amount or the percentage of the cost which the local unit will contribute to the payment of the cost of the local improvement;

2. a statement of the number of annual installments in which the special assessments may be paid, not exceeding 20, or the average thereof if more than 1 local improvement is being financed; and

3. a statement of the estimated maximum amount of the special assessments.

b. Before or after confirmation of special assessments, a local unit may authorize and issue obligations to finance a local improvement, except that

1. a local unit may not issue bonds to finance its share of the cost of a local improvement in excess of the amount or percentage of contribution;

2. bonds to finance the cost of a local improvement to be assessed against properties may not be issued in excess of the stated estimated maximum amount of special assessments, or the amount of special assessments then confirmed, unpaid and not delinquent.

c. Bonds to finance that part of the cost of a local improvement which is to be assessed on property shall not be issued to finance any other additional purpose and shall include in the title thereof the word "assessment".

L.1960, c. 169, s. 1, eff. Jan. 1, 1962. Amended by L.1983, c. 169, s. 2, eff. May 3, 1983.

40A:2-15. Power to make special covenants in bond

Any bond ordinance to finance any cost or expense of a municipal public utility, or any ordinance amendatory thereof or supplemental thereto adopted prior to the issuance of obligations, may contain the following covenants with the holders of such obligations which shall be observed and performed by the local unit, notwithstanding the provisions of this or any other law:

a. As to the use and disposition of revenues derived or to be derived from the operation of the whole or any part of any municipal public utility, including any improvements thereto or extensions thereof thereafter constructed or acquired, whether said obligations are authorized to finance construction, improvement, enlargement, reconstruction, extension or acquisition of such or any other municipal public utility;

b. Pledging to the punctual payment of the principal of and interest on such obligations, all or any part of such revenues;

c. As to the setting aside out of such revenues of 1 or more reserve funds, and the regulation and disposition thereof;

d. As to the fixing and collection of such rates, rentals and other charges for connection with or the use of any such municipal public utility, including any improvements thereto or extensions thereof thereafter constructed or acquired as will annually produce revenues sufficient to provide for all or any lesser part described in said ordinance of the following:

1. expenses of operation, maintenance and repair of such utility and any other such utilities,
2. payment of the principal of and interest on said obligations,
3. such reserve funds as may have been provided for in said ordinance,
4. payment of any mortgage or mortgages subject to which such utility or any other such utilities, or any part thereof may have been acquired, and

5. payment of any obligations having a lien on the revenues of such utility or any other such utilities, or any part thereof prior to or on a parity with the lien of such obligations;

e. As to the procedure, if any, by which the terms of any covenant with the holders of such obligations may be amended or abrogated, the amount of obligations the holders of which must consent thereto and the manner in which such consent may be given.

Such obligations may contain such recitals of or reference to any such covenants as any resolution determining their form may provide.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-16. Matters not in bond ordinance

All matters not required to be contained in the bond ordinance may be determined by subsequent resolutions passed by the recorded affirmative votes of a majority of the full membership of the governing body.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-17 Adoption of bond ordinance, procedures.

a. Introduction.

A bond ordinance shall be introduced in writing at a meeting of the governing body and shall be passed upon first reading, which may be by title.

b. Publication, hearing and adoption.

The bond ordinance, or a summary thereof, in a form prescribed by the Local Finance Board, shall be published after first reading, together with notice of the introduction thereof and of the date, which shall be at least 10 days after introduction and first reading, and the time and place of further consideration for final passage, which may be at an adjournment of such meeting or another meeting. If a summary is published, the summary shall contain a clear and concise statement prepared by the clerk of the governing body setting forth the purpose of the ordinance, the amount of indebtedness being authorized and the time and place when and where a copy of the ordinance can be obtained, without cost, by any member of the general public residing in the local unit.

Such publication shall be at least one week prior to the date for further consideration. At the time and place so advertised, or at any time and place to which such meeting or further consideration shall from time to time be adjourned, such bond ordinance may be read by its title, if,

(1) at least one week prior to such date or further consideration, there shall have been posted, on the bulletin board or other place upon which public notices are customarily posted in the principal municipal building of the municipality,

(a) a copy of such bond ordinance or summary, and

(b) a notice that copies of such bond ordinance will be made available during such week and up to and including the date of such meeting or further consideration to the members of the general public of the municipality who shall request such copies, naming the place at which such copies will be so made available, and

(2) such copies of said bond ordinance shall have been made available accordingly, but otherwise such bond ordinance shall be read in full. All persons interested shall then be given an opportunity to be heard.

After the duplicate of the supplemental debt statement has been filed in the office of the director, and after such hearing, the governing body may proceed to amend the bond ordinance and thereupon finally adopt or reject it, with or without amendments.

If any amendment is adopted substantially altering matters required by this chapter to be contained in the bond ordinance, such amended bond ordinance shall not be finally adopted until at least one week thereafter and until the bond ordinance or a summary of it shall have been published once at least two days prior to the date for further consideration, together with notice of the date, time and place at which it will be further considered for final adoption. At the time and place so advertised, or at any time and place to which such meeting or further consideration shall from time to time be adjourned, such amended bond ordinance may be read by its title, if,

(1) at least one week prior to such date or further consideration, there shall have been posted, on the bulletin board or other place upon which public notices are customarily posted in the principal municipal building of the municipality,

(a) a copy of such bond ordinance or summary, and

(b) a notice that copies of such bond ordinance will be made available during such week and up to and including the date of such meeting or further consideration to the members of the general public of the municipality who shall request such copies, naming the place at which such copies will be so made available, and

(2) such copies of said bond ordinance shall have been made available accordingly, but otherwise such bond ordinance shall be read in full. All persons interested shall again be given an opportunity to be heard. After such hearing, the governing body may proceed to reject, finally adopt or further amend such bond ordinance.

A bond ordinance shall be finally adopted by the recorded affirmative votes of at least 2/3 of the full membership of the governing body. In a local unit in which the approval of any officer is required to make an ordinance or resolution effective, such bond ordinance shall be so approved, or passed over veto before it shall be published after final adoption.

c. Final publication with statement.

Every bond ordinance shall be published either in full or in summary form after final adoption, together with a statement in substantially the following form:

STATEMENT

The bond ordinance published herewith has been finally adopted and the 20-day period of limitation within which a suit, action or proceeding questioning the validity of such ordinance can be commenced, as provided in the Local Bond Law has begun to run from the date of the first publication of this statement.

Clerk

Amended 1963, c.153; 2000, c.126, s.14.

40A:2-18 Bond ordinance, effective date.

A bond ordinance shall take effect 20 days after the first publication of the ordinance or of a summary thereof after final adoption. A bond ordinance which authorizes obligations to fund, refund, renew, extend or retire obligations issued or authorized pursuant to this chapter, or notes or bonds issued or authorized pursuant to any act of which this chapter is a revision shall not be subject to referendum.

Amended 2000, c.126, s.15.

40A:2-19 Publications

Publications required by this chapter shall, in the case of a municipality, be in a newspaper published and circulating in the municipality, if there be one, and if not, in a newspaper published in the county and circulating in the municipality. In the case of a county, publications shall be in a newspaper published at the county seat, if there be one, and if not, in a newspaper published and circulating in the county. For the purposes of this section, a newspaper shall not be deemed to be published during any period of time in which the publication of such newspaper shall be interrupted by any involuntary suspension of publication resulting from loss, destruction, mechanical or electric failure of typesetting equipment or printing presses or the unavailability due to conditions beyond the control of the publisher, of paper or other materials and supplies necessary for operation, or resulting from a labor dispute with a recognized labor union.

Amended 1970, c.318.

40A:2-20. Expenses included in cost

The cost of an improvement or property may include interest on obligations until the end of the fiscal year in which the obligations are issued or until 6 months after the completion of construction or acquisition, and architect's fees, accounting, engineering and inspection costs, legal expenses, costs of authorizing, selling and issuing obligations, preliminary planning, test and survey expenses, and a reasonable proportion of the compensation and expenses of employees of a local unit in connection with the construction or acquisition of such improvement or property.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-21. Minimum period of usefulness

No local unit shall authorize obligations for any improvement or purpose having a period of usefulness of less than 5 years.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-22. Maximum bond terms

The governing body of the local unit shall determine the period of usefulness of any purpose according to its reasonable life computed from the date of the bonds, which period shall not be greater than the following:

- a. Buildings and structures.
 1. Bridges, including retaining walls and approaches, or permanent structures of brick, stone, concrete or metal, or similar durable construction, 30 years.
 2. Buildings, including the original furnishings and equipment therefor:
 - Class A: A building, of which all walls, floors, partitions, stairs and roof are wholly of incombustible material, except the window frames, doors, top flooring and wooden handrails on the stairs, 40 years;
 - Class B: A building, the outer walls of which are wholly of incombustible material, except the window frames and doors, 30 years;
 - Class C: A building which does not meet the requirements of Class A or Class B, 20 years.
 3. Buildings or structures acquired substantially reconstructed or additions thereto, one-half the period fixed in this subsection for such buildings or structures.

4. Additional furnishings, five years.
- b. Marine improvements.
1. Harbor improvements, docks or marine terminals, 40 years.
 2. Dikes, bulkheads, jetties or similar devices of stone, concrete or metal, 15 years; of wood or partly of wood, 10 years.
- c. Additional equipment and machinery.
1. Additional or replacement equipment and machinery, 15 years.
 2. Voting machines, 15 years.
- d. Real property.
1. Acquisition for any public purpose of lands or riparian rights, or both, and the original dredging, grading, draining or planting thereof, 40 years.
 2. Improvement of airport, cemetery, golf course, park, playground, 15 years.
 3. Stadia of concrete or other incombustible materials, 20 years.
- e. Streets or thoroughfares.
1. Elimination of grade crossings, 35 years.
 2. Streets or roads:

Class A: Rigid pavement. A pavement of not less than eight inches of cement concrete or a six-inch cement concrete base with not less than three-inch bituminous concrete surface course, or equivalent wearing surface, 20 years.

Flexible pavement. A pavement not less than 10 inches in depth consisting of five-inch macadam base, three-inch modified penetration macadam and three-inch bituminous concrete surface course or other pavements of equivalent strength, in accordance with the findings of the American Association of State Highway Officials (AASHO) Road Test, 20 years.

Class B: Mixed surface-treated road. An eight-inch surface of gravel, stone or other selected material under partial control mixed with cement or lime and fly ash, six inches in compacted thickness with bituminous surface treatment and cover, 10 years.

Bituminous penetration road. A five-inch gravel or stone base course and a three-inch course bound with a bituminous or equivalent binder, 10 years.

Class C: Mixed bituminous road. An eight-inch surface of gravel, stone, or other selected material under partial control mixed with bituminous material one inch or more in compacted thickness, five years.

Penetration macadam road. A road of sand, gravel or water-bound macadam, or surfacing with penetration macadam, five years.

3. Sidewalks, curbs and gutters of stone, concrete or brick, 10 years.

The period of usefulness in this subsection shall apply to construction and reconstruction of streets and thoroughfares.

- f. Utilities and municipal systems.

1. Sewerage system, whether sanitary or storm water, water supply or distribution system, 40 years.
2. Electric light, power or gas systems, garbage, refuse or ashes incinerator or disposal plant, 25 years.
3. Communication and signal systems, 10 years.
4. House connections to publicly-owned gas, water or sewerage systems from the service main in the street to the curb or property lines where not part of original installation, five years.

- g. Vehicles and apparatus.

1. Fire engines, apparatus and equipment, when purchased new, but not fire equipment purchased separately, 10 years.
2. Automotive vehicles, including original apparatus and equipment (other than passenger cars and station wagons), when purchased new, five years.
3. Major repairs, reconditioning or overhaul of fire engines and apparatus, which may reasonably be expected to extend for at least five years the period of usefulness thereof, five years.

- h. The closure of a sanitary landfill facility utilized, owned or operated by a county or municipality, 15 years; provided that the closure has been approved by the Board of Public Utilities and the Department of Environmental Protection and Energy. For the purposes of this subsection "closure" means all activities associated with the design,

purchase or construction of all measures required by the Department of Environmental Protection and Energy, pursuant to law, in order to prevent, minimize or monitor pollution or health hazards resulting from sanitary landfill facilities subsequent to the termination of operations at any portion thereof, including, but not necessarily limited to, the costs of the placement of earthen or vegetative cover, and the installation of methane gas vents or monitors and leachate monitoring wells or collection systems at the site of any sanitary landfill facility.

i. Any purpose, except vehicles, not included in the foregoing, for which obligations may be issued, 15 years.

j. The prefunding of a claims account for environmental liability claims by an environmental impairment liability insurance pool pursuant to P.L.1993, c.269 (C.40A:10-38.1 et al.), 20 years.

Amended 1964,c.133; 1981,c.273,s.1; 1985,c.153,s.2; 1993,c.269,s.18.

40A:2-24. Form of obligations

Notes may be issued payable to bearer, with interest payable to bearer or on presentation for endorsement or may be in registered form. Notes payable to bearer may be made subject to registration and the principal of and interest on notes so registered shall be payable to the registered owner.

Bonds may be issued either in coupon or registered form. Bonds in coupon form may contain provision for registration as to principal only and as to both principal and interest. Bonds issued in fully registered form or in coupon form with provision for registration as to both principal and interest may contain provision for conversion into bonds in coupon form at the request and expense of the registered owner or his duly authorized attorney or legal representative.

Any obligations may be issued subject to redemption prior to maturity with or without premium, or at such redemption price or prices and under such terms and conditions as may be fixed by resolution of the governing body.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-25. Execution and delivery of obligations

Obligations shall be executed in the name of the local unit by the manual or facsimile signatures of such officials, including a financial officer, as may be designated by resolution, or if none be designated, of the director of the board of chosen freeholders of a county or the mayor, or other executive officer of the municipality and of a financial officer of the local unit, and shall be under the seal of the local unit affixed, imprinted or reproduced thereon and attested by the manual signature of the clerk or deputy clerk. Coupons attached to any obligation shall be authenticated by the facsimile or manual signature of the financial officer whose manual or facsimile signature appears upon the obligation.

Delivery of obligations fully executed by the officers holding office at the time of such execution shall be valid, notwithstanding any change in such officers or in the seal occurring after such execution.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962. Amended by L.1983, c. 370, s. 1, eff. Oct. 27, 1983.

40A:2-26 Maturities of bonds.

Maturities of all bonds shall be as determined by bond ordinance or by subsequent resolution and within the following limitations:

- a. All bonds shall mature within the period or average period of usefulness determined in the bond ordinance.
- b. All bonds shall mature in annual installments, the first of which shall be payable not more than one year from the date of the bonds. No annual installment shall exceed by more than 100% the amount of the smallest prior installment.
- c. The first installment of bonds to finance a municipal public utility may be made payable not later than the end of the second year's operation, computed from the estimated date of completion, as fixed in the project report submitted pursuant to this chapter.
- d. Bonds to finance that part of the cost of a local improvement which is to be assessed on property shall mature in annual installments not exceeding in number the number of annual installments or average thereof fixed in the bond ordinance for the payment of special assessments. The first annual installment of such bonds shall be payable not more than two years from the date of the bonds, and no annual installment shall exceed the amount of the smallest prior installment.
- e. A governing body which has concluded that the limitations as to maturities or amounts of annual installments will adversely affect the financial position of the local unit, may make written application to the local government board setting forth its conclusion and the reasons therefor and the desired maturities or the amounts of annual installments for bonds about to be issued. If the local government board finds such conclusion to be well founded, it may, by order, fix the maturities or amounts of annual installments of such bonds as desired by the local unit, or fix any such other maturities or amounts of annual installments which the circumstances warrant.
- f. The governing body, by resolution, may provide for a single and combined issue of bonds not exceeding the aggregate amount of bonds authorized by two or more bond ordinances. The bonds of such issue shall mature within the average period of usefulness which shall be determined in said resolution, taking into consideration the respective amount of bonds authorized by each of the bond ordinances and the period or average period of usefulness therein determined. The provisions of this chapter applicable to the

sale and issuance of a single issue of bonds shall apply to the sale and issuance of such combined issue of bonds.

g. The governing body, by resolution, may allow the adjustment of, or otherwise delegate to a finance officer the authority to adjust, the maturity schedule of the bonds, up to 24 hours prior to the time advertised for the receipt of bids and within 24 hours after the award of bids; provided that no maturity schedule adjustment shall exceed 10% of the principal for any maturity with the aggregate adjustment to maturity not to exceed 10% of the principal for the overall issue. When an adjustment has been made to a maturity schedule previously approved by the local finance board, a copy of the final maturity schedule which meets or complies with the limitations in this subsection shall be filed with the board within 30 days of the sale and shall be conclusively deemed to have been approved by the board.

Amended 2003, c.15, s.3.

40A:2-27 Sale of bonds, methods.

a. All bonds shall be sold at public sale upon the submission of sealed bids or through the submission of electronic proposals, except that bonds may be sold at private sale without any previous public offering:

- (1) if constituting all or part of an authorized issue of \$1,000,000 or less, or
- (2) if sold to any board, body, agency, commission, instrumentality, district, authority or political subdivision of any local unit, or of the State, or of the Federal Government.

b. (1) If no legally acceptable bid is received at advertised public offering pursuant to subsection a. of this section, such bonds or any of them may be sold at private sale within 30 days after the advertised date for public bidding, provided, however, that no bonds shall contain substantially different provisions from those specified in said notice.

(2) Any purchaser of bonds at private sale, other than a public body, shall deposit a certified or cashier's or treasurer's check drawn upon a bank or trust company in an amount equal to 5% of the amount of bonds purchased and such amount shall be applied as in the case of a deposit made at public sale.

(3) Any private sale of bonds shall be made or confirmed by resolution of the governing body adopted by not less than a 2/3 vote of the full membership thereof, setting forth the date, maturities, interest rate and price of the bonds and the name of the purchaser.

c. If the governing body determines to conduct the public sale through the submission of electronic proposals, such electronic proposals shall be submitted in the form of open or closed auctions conducted through a nationally recognized electronic securities bidding service and in accordance with such rules as may be promulgated by the board. The local finance board may

adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), regulating the terms and conditions of the submission of electronic proposals.

Amended 1981, c.111, s.1; 2003, c.15, s.4.

40A:2-28. Sale of bond anticipation notes or capital notes

All bond anticipation notes or capital notes may be sold at private sale pursuant to resolution of the governing body, or by a financial officer of the local unit expressly designated by resolution to sell such notes. The financial officer making any such sale shall report in writing to the governing body at the next meeting thereof as to the principal amount, interest rate, and maturities of the notes sold, the price obtained and the name of the purchaser.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-29 Minimum price for obligations.

Obligations sold pursuant to subsection d. of N.J.S.40A:2-32 shall be sold at not less than par value plus any interest accrued to the date of delivery. No other obligations shall be sold for less than 99% of par value and interest accrued to date of delivery unless the local unit has obtained the approval of the director, which approval may be subject to such conditions as the director deems necessary and appropriate.

Amended 2003, c.15, s.5.

40A:2-30 Advertisement of public sale of bonds.

a. A notice of public sale of bonds containing the provisions described in subsection a. of N.J.S.40A:2-31 shall be advertised at least once at least seven days prior thereto in a newspaper qualified for publication of a bond ordinance of the local unit. A summary of the notice of public sale of bonds as provided for in subsection b. of N.J.S.40A:2-31 shall be advertised at least once at least seven days prior thereto in a nationally recognized local government bond marketing publication or electronic information service carrying municipal bond notices and devoted primarily to financial news or the subject of state and municipal bonds.

b. The governing body, may, by resolution, allow or otherwise delegate to a finance officer the authority to postpone a public sale without readvertisement provided that the notice pursuant to subsection a. of this section contained precise information concerning the postponement and rescheduling procedure. The postponement and rescheduling procedure shall provide that a public sale may be postponed upon not less than 24 hours' notice, and that if the public sale is postponed, it may be recommenced upon not less than 48 hours' notice without further notice of sale. A public sale may not be postponed for more than 60 days without readvertisement.

Amended 1992, c.178, s.3; 2003, c.15, s.6.

40A:2-31 Contents of notice.

a. A notice of public sale of bonds required to be advertised pursuant to N.J.S.40A:2-30 shall set forth:

- (1) the principal amount, date, denomination and maturities, and authorization for any adjustments to the maturities pursuant to subsection g. of N.J.S.40A:2-26 of the bonds offered for sale;
- (2) the rate or rates of interest or maximum rate or rates of interest to be borne by the bonds and the method of calculation of interest cost pursuant to subsection e. of N.J.S.40A:2-32;
- (3) postponement provisions and other terms and conditions of such public sale;
- (4) the type of sale to be conducted, through the submission of either sealed or electronic proposals; and
- (5) such other provisions as may be determined by the governing body.

b. A summary of the notice of public sale of bonds required to be advertised pursuant to N.J.S.40A:2-30 shall set forth:

- (1) the principal amount, date, denomination and maturities of the bonds offered for sale;
- (2) the rate or rates of interest or maximum rate or rates of interest to be borne by the bonds;
- (3) a reference to where additional terms and conditions of the public sale may be obtained; and
- (4) the type of sale to be conducted, through the submission of either sealed or electronic proposals.

Amended 1992, c.178, s.4; 2003, c.15, s.7.

40A:2-32 Sale of bonds; bidding requirements.

a. (1) All bidders shall be required to deposit a certified or cashier's or treasurer's check, drawn upon a bank or trust company, equal to not less than 2% of the bonds to secure the local unit in part from any loss resulting from the failure of the bidder to comply with the terms of his bid, or as liquidated damages for such failure.

(2) The local finance board may adopt rules to permit local units to accept a financial surety bond in lieu of a certified, cashier's or treasurer's check as required in paragraph (1) of this subsection.

b. All sealed bids for bonds shall be publicly opened and announced, and all bids received electronically shall be received and announced, at the advertised time and place of sale, except upon a postponement and recommencement of the public sale made in accordance with the provisions of subsection b. of N.J.S.40A:2-30 in which case such bids or proposals shall be publicly opened, received and announced, as appropriate, at the postponed and recommenced date. Such bids as comply with the terms of the notice of sale shall be considered, and any bid not complying with the terms of such notice may be rejected. All bids received may be rejected.

c. Bonds of two or more issues may be sold on the basis of combined maturities, or the maturities of each issue offered for sale.

d. Bonds may be offered for sale at a single rate of interest, or bidders may be requested to name a single rate of interest, but no proposal shall be considered which offers to pay less than the principal amount of bonds offered for sale or which names a rate of interest higher than the lowest rate of interest stated in any legally acceptable proposal. As between proposals naming the same lowest rate of interest, the proposal offering to accept the least amount of bonds shall be accepted, the bonds to be accepted shall be those first maturing, and as between such proposals, the proposal offering to pay the greatest premium shall be accepted. The amount of premium bid for the bonds shall in no event exceed \$1,000.00 for the principal amount of bonds offered for sale. In order to effect the foregoing, a sufficient number of the last maturing bonds shall be of the denomination of \$1,000.00 or less.

e. (1) Bonds may be offered for sale at different rates of interest for the same issue or different rates of interest for different issues, or parts thereof, or bidders may be requested to name any such rates of interest. No proposal shall be considered under which the total loan is made at an interest cost higher than the lowest net interest cost or the true interest cost to the local unit under any legally acceptable proposal. The governing body shall specify in its notice of public sale advertised pursuant to N.J.S.40A:2-30 whether the award shall be based on net interest cost or true interest cost.

(2) The net interest cost shall be computed by adding to the total principal amount of bonds bid for, the total interest cost to maturity in accordance with such bid and by deduction therefrom of the amount of premium, if any, bid or the addition thereto of the amount of discount, if any, bid.

(3) The true interest cost shall be computed in each instance by determining the interest rate, compounded semi-annually, necessary to discount the debt service payments to the date of the bonds and to the price bid, excluding interest accrued to the delivery date.

f. The governing body may establish additional terms or conditions of sale.

g. The governing body may, by resolution, allow or otherwise delegate to a finance officer the authority to permit bidders to aggregate consecutive principal maturities for which such bidder bid the same interest rate into term bonds, provided that mandatory sinking funds for which redemptions in lieu of the principal maturities are provided. For the purposes of this subsection "term bond" means a bond that is due in a certain year but has mandatory retirement provisions for portions of the term bond on specified dates prior to the maturity date of the term bond itself.

Amended 2003, c.15, s.8.

40A:2-33. Sale of bonds at 1 time or in installments

Any issue of bonds may be sold at 1 time or in installments at different times. The maturities of an installment of bonds offered for sale when combined with all maturities of the issue previously sold, shall be such as to comply with requirements as to maturities of a single issue of bonds. Any unsold part of an issue or installment may be sold notwithstanding that the maturities thereof, when considered alone, do not comply with such requirements.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-34. Power of financial officer to sell bonds

The governing body, by resolution, may designate a financial officer of the local unit to sell and award bonds in accordance with the advertised terms of public sale. The financial officer making any such sale shall report in writing to the governing body at the next meeting thereof as to the principal amount, interest rate, and maturities of the bonds sold, the price obtained and the name of the purchaser.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-35. Conversion, reconversion and reissuance of bonds

Unmatured bonds heretofore or hereafter issued by a local unit under this chapter or any other law, and containing provisions for registration, conversion or reconversion, or issued as bonds in registered form or coupon form without any of such provisions, shall be registered, converted, reconverted or replaced as herein provided at the written request and expense of the holder of bonds in bearer form or of the registered owner or his authorized attorney or legal representative.

Coupon bonds shall be registered as to both principal and interest by removing and canceling all unmatured coupons and by executing conversion certificates written or stamped on the bonds. Coupon bonds converted into bonds registered as to both principal and interest shall be reconverted into bonds in coupon form by the registration of such bonds to bearer, or the preparation and substitution of new bonds bearing the same rate of interest and of the same tenor as the original bonds, and by attaching to such bonds new coupons for the unmatured interest of

the same form and tenor as those originally authorized. Any such bonds may be again converted or reconverted from time to time.

Fully registered bonds shall be converted into bonds in coupon form of the same or different denominations by preparation and substitution of new bonds with all privileges of registration, conversion and reconversion, and bearing the same rate of interest and being otherwise of the same tenor as the original bonds.

Any conversion or reconversion of fully registered bonds shall be pursuant to resolution of the governing body, which shall set forth the written request of the registered owner or his authorized attorney or legal representative, and the date, maturities, interest rate, denomination and numbers of the old and the new bonds. Any new bonds issued hereunder shall be signed by such officers in office at the time of such conversion or reconversion, or the authorization thereof, and any new coupons shall be authenticated by the facsimile signature of such present or former financial officer as the governing body may designate.

The governing body, by resolution, may authorize a new coupon bond to replace any outstanding bond prior to its maturity. The new bond shall be of substantially the same form and tenor as the outstanding bond, except that (1) the new bond may be a bond payable to bearer with 2 or more coupons attached for the payment to the several bearers thereof of a portion of each installment of the interest to become due thereon at or prior to the maturity thereof, (2) the rate or rates of interest on the new bond and the aggregate amount of any installment of interest to become due thereon at or prior to maturity thereof may be less than such rate and aggregate amount, respectively, with regard to the outstanding bond, and (3) the new bond shall be signed by such officers in office at the time such new bond is issued or is authorized to be issued, and the new coupons shall bear the facsimile signature of such present or former financial officer as the governing body may designate, and (4) the new bond may be made registerable as to principal only, or as to both principal and all interest payable thereon, or as to both principal and interest represented by any particular coupon or coupons. There shall be endorsed on the new bond substantially the following statement: "This bond has been revised as to form and reissued as of the day of , 19 ", in which statement shall be inserted the date of issuance of the new bond or any earlier date not previous to the last preceding date of payment of interest on the outstanding bond. A new bond shall not be issued unless the outstanding bond shall be presented and surrendered with a written request for its reissuance. Upon effecting the issuance of any new bond, the officer effecting the same shall execute and file a certificate identifying the bond in the office of the clerk.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-36. Lost, destroyed or defaced obligations

Lost, destroyed or defaced obligations shall be reissued in the form and tenor of the original obligations upon supplying to the satisfaction of the governing body (a) proof of ownership, (b) proof of loss or destruction or the defaced or partially destroyed obligations, (c) adequate surety bond, and (d) payment of cost of preparation of new obligations. The new obligations shall be issued pursuant to resolution of the governing body setting forth the written request of the holder

or owner or his authorized attorney or legal representative, of the lost, destroyed or defaced obligations and the date, maturity, interest rate, denomination and numbers of such obligations and the amount and term of the surety bond. The new obligations shall be signed by such officers in office at the time of the issuance or the authorization thereof, and the new coupons, if any, shall be authenticated by the facsimile signature of such present or former financial officer as the governing body may designate.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-37. Contracts to be financed by obligations

The governing body shall not make any contract under which payments are to be financed pursuant to a bond ordinance until such bond ordinance shall be effective.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-38. Prohibited agreements

In the issuance or sale of obligations, it shall be unlawful for the governing body or any member thereof or any official:

- a. To pay or agree to pay, directly or indirectly, any bonus, commission, fee or other compensation or consideration for the issuance or for the sale of obligations, and any amount so paid may be recovered for the local unit;
- b. To make any agreement with any purchaser or bidder, or his representative, regarding the deposit or disposition or any moneys received or to be received from such sale and every such agreement shall be void;
- c. To make any agreement pertaining to the sale of obligations which contains provisions as to any other matter, and such sale and any such agreement shall be void;
- d. To make any agreement or "service contract" with respect to publication of notice of sale and printing of bonds or notes, the providing of a legal opinion or for any of such services, whether or not accompanied by an offer to bid for or purchase obligations. Any such agreement or contract shall be void, and any amount so paid may be recovered for the local unit; except, however, agreements made directly with a newspaper, bond printer or an attorney licensed to practice law in the State in which he has his office.

A municipal bond dealer, banker, or financial expert may be engaged or employed as a financial advisor to provide financial services in connection with the sale of obligations, including the preparation of a bidding circular or prospectus. The financial advisor may bid for obligations offered by the issuer at public sale. The financial advisor shall not purchase any such obligations at any private sale, but any such purchase shall not affect the validity of the obligations, and the

local unit shall recover any compensation and profit resulting therefrom to such financial advisor.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962. Amended by L.1981, c. 268, s. 1, eff. Aug. 24, 1981.

40A:2-38.1. Attorneys; compensation; services on issuance of bonds

No county, municipality or other political subdivision of the State or any board, commission or agency thereof, shall compensate an attorney for services rendered in connection with the issuance of bonds other than at a reasonable rate agreed on prior to the rendering of the services.

L.1973, c. 114, s. 1.

40A:2-39. Application of proceeds

The proceeds of the sale of obligations shall be applied only to the purposes for which such obligations are authorized. If, for any reason, any part of such proceeds are not necessary for such purposes, such part shall be used to pay such outstanding obligations, or if in the opinion of the governing body it is in the best interest of the local unit such part may be appropriated to and used to finance the cost of any other purpose or purposes for which bonds may be issued.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-40. Annual debt statement

The chief financial officer of each local unit shall, before the end of the first month of each fiscal year, make and file in the office of the clerk and of the director an annual debt statement, under oath, as of the last day of the preceding fiscal year, and such statement shall be a public record open to inspection.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-41. Contents of annual debt statement

The annual debt statement shall be in form prescribed by the director and shall set forth as to the local unit:

- a. Gross debt;
- b. Deductions;
- c. Net debt;

- d. The equalized valuations of the taxable real estate, together with improvements, for the last 3 preceding fiscal years, and the average thereof;
- e. Net debt expressed as a percentage of such average of equalized valuations; and
- f. Any other information or detail required by law or by the director. The amount of any item which is indefinite or unascertainable may be estimated.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962. Amended by L.1964, c. 72, s. 5.

40A:2-42. Supplemental debt statement

A supplemental debt statement shall be in form prescribed by the director and shall set forth as to the local unit:

- a. The net debt as stated in the annual debt statement or revision thereof last filed; the amount by which such net debt has been increased by the authorization of additional debt or decreased by payment of outstanding debt or reduction of the authorization to incur debt;
- b. The amounts and purposes separately itemized of obligations about to be authorized, together with any deductions which may be made on account of any such item;
- c. The net debt of the local unit as determined by addition of the net amounts stated in subsections a and b;
- d. The equalized valuations of the taxable real estate, together with improvements for the last 3 preceding years, and the average thereof as stated in the annual debt statement or revision thereof last filed; and
- e. Net debt expressed as a percentage of said average of equalized valuations.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962. Amended by L.1964, c. 72, s. 6.

40A:2-43. Gross debt

Gross debt shall include all bonds and notes issued and authorized but not issued pursuant to this or any other law by the local unit, or guaranteed by the local unit, except tax anticipation notes, emergency notes, special emergency notes and utility revenue notes. Gross debt of a municipality shall also include that amount of the total of all the bonds and notes issued and authorized but not issued by any school district including the area of the municipality, which results from the application to such total of the ratio which the equalized valuation basis of the municipality bears to the sum of the equalized valuation basis of each municipality in any such school district.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962. Amended by L.1964, c. 72, s. 7.

40A:2-44. Deductions from gross debts

There shall be deducted from the gross debt of the local unit, to the extent included therein, the amount of bonds or notes issued and authorized but not issued:

a. for school purposes by a municipality or by a school district with boundaries coextensive with such municipality or of which such municipality is a part (other than a regional school district) to the extent of the following percentages of the equalized valuation basis of such municipality as provided in section 18A:24-19 of the New Jersey Statutes.

If such school district does not have title to any one of the facilities mentioned in such section, the authorization of debt for the procurement of such school facilities shall be deductible within the limitations prescribed in such section;

b. for school purposes by a regional school district;

c. for purposes which are self-liquidating as provided in this chapter, but only to the extent permitted by this chapter;

d. by a public body other than the local unit and the principal and interest of which is guaranteed by the local unit but only to the extent permitted by this chapter or any other law;

e. as bond anticipation notes in anticipation of bonds then authorized or issued;

f. for which there are funds on hand or sinking funds applicable only to the payment thereof and not otherwise deductible, including the proceeds of any bonds or notes held for that purpose and any accounts receivable or amounts which may be payable from the Federal Government, this State or any public instrumentality thereof, which funds are applicable only to the payment of any part of the gross debt not otherwise deductible;

g. for any other purpose for which a deduction is authorized by law; and

h. for any purpose authorized pursuant to P.L.1997, c.24 (C.40:12-15.1 et seq.) which is otherwise bondable pursuant to the "Local Bond Law," N.J.S.40A:2-1 et seq. when the debt service on the obligations will be paid solely from a county or municipal trust fund created pursuant to P.L.1997, c.24 (C.40:12-15.1 et seq.).

No deduction shall be allowed for any obligations authorized or issued to finance a purpose for which a deduction is allowed if, combined with a purpose for which a deduction may not be taken, or for any obligation issued to fund or refund bonds or notes if any of the outstanding bonds or notes paid, funded or refunded shall have been issued for or combined with a purpose or indebtedness for which no deduction can be taken under this chapter.

Amended 1964, c.72, s.8; 1969, c.14; 1999, c.345.

40A:2-45. Self-liquidating purposes

Any municipal public utility shall be deemed to be a self-liquidating purpose if the cash receipts from fees, rents or other charges in a fiscal year are sufficient to meet operating and maintenance costs (exclusive of depreciation and obsolescence) and interest and debt redemption charges payable or accruing in such year without recourse to general taxation or the deficit, if any, anticipated in the dedicated utility assessment budget. There may be included in such cash receipts any fees, rents and other charges collected from other departments or utilities of the local unit at a rate not in excess of the fees, rents or other charges to other consumers, customers or users, or if there be no other consumers, customers or users properly comparable, then not in excess of the comparable fees, rents and other charges of privately owned or operated utilities or enterprises. Any municipal public utility may include interest on investments and deposits and appropriated surplus as revenues, in addition to the other revenues authorized by this section, in a determination of whether that municipal public utility shall be deemed to be a self-liquidating purpose.

Amended 1964, c.72, s.9; 1991, c.196; 1996, c.76.

40A:2-46. Self-liquidating purposes during construction

Any municipal public utility shall be deemed to be self-liquidating during the period of construction or acquisition and until it shall have been in operation for at least 1 fiscal year if the local government board or, in the case of a project consisting of acquisition of land areas needed for a redevelopment housing project, the Division of Planning and Development in the Department of Conservation and Economic Development shall have determined by order on the basis of a project report that the said municipal public utility will have an income sufficient to make it a self-liquidating purpose.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-47. Self-liquidating improvements and extensions

Obligations to finance an improvement or extension of a municipal public utility shall be deemed to be for a self-liquidating purpose in the fiscal year in which the obligations to finance the same shall have been authorized or issued:

- a. if such utility would have been self-liquidating during the last fiscal year had there been included in the interest and debt redemption charges for such year an amount equal to interest for 1 year at the rate of 4 1/2 % per annum on such obligations, and the amount of the first installment of serial bonds legally issuable to finance such improvement or extension plus an amount for charges as aforesaid with respect to all bonds and notes authorized but not issued for such utility;
- b. if the local government board or, in the case of a project consisting of acquisition of land areas needed for a redevelopment housing project, the Division of Planning and

Development in the Department of Conservation and Economic Development, shall determine by order on the basis of a project report that said utility would have been self-liquidating during the last preceding fiscal year if there had been included interest and debt redemption charges for said obligations and prospective income from said improvement or extension, or that said utility would have been self-liquidating if charges had been collected in said last preceding fiscal year as prescribed in said report.

The local government board or, in the case of a project consisting of acquisition of land areas needed for a redevelopment housing project, the Division of Planning and Development in the Department of Conservation and Economic Development are hereby authorized and empowered to make any determination required by this chapter.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-48. Self-liquidating utility deficits

The amount of the deficit in the income of a self-liquidating municipal public utility applicable to interest and debt redemption, or the prospective amount of such deficit as determined by the local government board or, in the case of a project undertaken pursuant to the urban redevelopment law, the Division of Planning and Development in the Department of Conservation and Economic Development, shall be capitalized at 5% and the capital sum so determined shall not be deductible from the gross debt.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-49. Conclusiveness of authorization of obligations

After 20 days after publication after final passage of a bond ordinance, the following shall be conclusively presumed:

- a. the accuracy, correctness and sufficiency of any annual or supplemental debt statement filed in connection therewith;
- b. any recitals or statements of fact contained in such ordinance or preamble or recital thereof;
- c. determinations in said ordinance as to purposes for which said obligations are authorized, the period or average period of usefulness, the maturities of any obligations, and the validity of the purpose or purposes for which authorized;
- d. the due and regular introduction, publication and final passage and adoption of such ordinance;

- e. the compliance with the provisions of this chapter and every other law of such ordinance and all matters in connection therewith, and the issuance of obligations authorized thereby or pursuant thereto by the local unit.

The local unit and all other persons interested shall forever be estopped from denying that such ordinance or its final adoption or issuance of obligations thereunder do not comply with the provisions of this and every other law, or from questioning in any manner the validity of such ordinance or any obligations issued thereunder in any action or proceeding commenced after 20 days shall have elapsed from publication of such ordinance after final passage.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-50. Conclusiveness of validity of obligations

After issuance, all obligations shall be conclusively presumed to be fully authorized and issued by all the laws of this State, and any person shall be estopped from questioning their sale, execution or delivery by the local unit.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-51 Issuance of refunding bonds.

Any local unit may incur indebtedness, borrow money, authorize and issue refunding bonds, notwithstanding any provision or limitation contained in this chapter or in any other law, and in any amount determined to be necessary by the governing body of the local unit and approved by the Local Finance Board, except as provided in subsection c. of this section, to effect the refunding for the purpose of:

- a. Paying, funding or refunding outstanding bonds of the local unit, including emergency appropriations, temporary emergency appropriations, advance funding of pension obligations as part of an early retirement program offered by the State, and amounts owing to others for taxes levied in the local unit, or any renewals or extensions thereof, or any bonds issued to fund or refund the same and whether or not prior to the maturity or earliest redemption date of the bonds to be refunded.
- b. Paying the cost of the issuance of such refunding bonds, including printing, advertising, accounting and financial and legal expenses.
- c. Issuance of refunding bonds to realize debt service savings on outstanding obligations without the approval of the local finance board when authorized by conditions set forth in rules and regulations of the local finance board and upon a resolution adopted by 2/3 vote of the full membership of the governing body.
- d. The sale and award of bonds by a finance officer who has been delegated that responsibility by resolution of the governing body in accordance with the advertised

terms of public sale. The finance officer making any such sale shall report in writing to the governing body at the next meeting thereof as to the principal amount, interest rate and maturities of the bonds sold, along with the price obtained and the name of the purchaser.

Amended 1978, c.36, s.1; 2003, c.15, s.9.

40A:2-51.1. Issuance of refunding bonds

Notwithstanding the provisions of N.J.S.40A:2-51 to the contrary, a county or a municipality in which a pension fund has been established pursuant to P.L.1943, c.160 (C.43:10-18.1 et seq.), R.S.43:10-1 through R.S.43:10-18, P.L.1948, c.310 (C.43:10-18.50 et seq.), or P.L.1954, c.218 (C.43:13-22.3 et seq.), may incur indebtedness, borrow money, authorize and issue negotiable refunding bonds, and in any amount determined to be necessary by the county or the municipality and approved by the Local Finance Board to effect the refunding for the purpose of the actuarial liabilities of its pension system, in addition to the other purposes for which it may do the same under N.J.S.40A:2-51.

L.1985,c.67,s.1; amended 1994,c.185,s.1.

40A:2-51.2. Local unit authorized to issue bonds

If a local unit shall require moneys for the purpose of assuring against adopting a budget which sets forth a deficit, the director may recommend that the Local Finance Board authorize the local unit to issue bonds, entitled "fiscal year adjustment bonds," authorized in accordance with the provisions governing refunding bonds for emergency appropriations set forth in N.J.S.40A:2-51 through 40A:2-60, except that the vote of the local governing body required for adoption of the bond ordinance or other action authorizing the sale of the bonds or bond anticipation notes shall be the same as required for adoption of the local budget. The proceeds of any fiscal year adjustment bonds shall be considered as anticipated revenues applicable to the expenditures for which appropriations are made in the transition year budget. In anticipation of the issuance of the bonds, bond anticipation notes may be issued in an amount not to exceed the estimate of the deficit in the transition year budget as determined by the director. Bond anticipation notes shall mature no later than one year from the date of issuance and may be renewed from time to time only with the permission of the Local Finance Board.

L.1991,c.75,s.5.

40A:2-51.3 Issuance of refunding bonds by local government entity for certain ERI liabilities.

Notwithstanding the provisions of N.J.S.40A:2-51 to the contrary, a county or municipality may incur indebtedness, borrow money, authorize and issue negotiable refunding bonds, in any amount determined to be necessary by the county or the municipality and approved by the Local

Finance Board to effect the refunding for the purpose of retiring the present value of the unfunded accrued liability for early retirement incentive benefits granted pursuant to P.L.1991, c.229, P.L.1991, c.230, P.L.1993, c.138, P.L.1993, c.181, P.L.1993, c.99, P.L.1999, c.59, P.L.2003, c.128, and P.L.2003, c.130, in addition to the other purposes for which it may do the same under N.J.S.40A:2-51. The system actuary shall calculate the present value of the unfunded liability due and owing by the municipality or county on a date certain upon the request of the county or municipality. For purposes of this section, "county" means any county of any class and all boards or commissions organized under such county, including but not limited to welfare boards, boards of social services, park commissions and mosquito control authorities.

L.2002,c.42,s.1; amended 2003, c.128, s.14; 2003 c.130, s.12.

40A:2-52 Authorization of refunding bonds.

Refunding bonds shall be authorized by a refunding bond ordinance which shall be adopted in the manner prescribed for adoption of a bond ordinance, except that no down payment shall be required. Bonds to be paid, funded or refunded with respect to which a refunding bond ordinance has been adopted pursuant to the provisions of this chapter and not otherwise deductible shall be deducted from the gross debt of the local unit. To the extent such refunding bonds are authorized for purposes other than the refunding of outstanding bonds, such refunding bonds shall be deductible from gross debt.

Amended 1978, c.36, s.2; 2003, c.15, s.10.

40A:2-53. Contents of refunding bond ordinance

A refunding bond ordinance shall contain in substance the following:

- a. An authorization of the issuance of the refunding bonds, stating in brief and general terms sufficient for reasonable identification the purpose or purposes for which said bonds are to be issued and the obligations to be paid, funded or refunded, and the amount of the cost of issuing such bonds which is included in the authorized principal amount thereof; and
- b. The principal amount of refunding bonds thereby authorized; and
- c. In either the refunding bond ordinance or a resolution adopted prior to the issuance of the refunding bonds such further provisions as the local government board may require or approve as to deposit, securing, regulation, investment, reinvestment, disposition or application of the proceeds of such refunding bonds, and matters in connection therewith, including the officer or officers of the local unit to be responsible therefor, and amortization or other provision for premiums or other losses incurred.

Such refunding bond ordinance or resolution may also contain provisions, which shall be a part of the contract with the holders of such refunding bonds, as to the establishment of, and the

making of appropriations for, reserves or sinking funds and the amount, source, securing, regulation and disposition thereof. Any matter relating to refunding bonds and not required to be contained in the refunding bond ordinance may be performed or determined by subsequent resolution of the governing body, or the performance or determination thereof delegated by resolution to a financial officer of the local unit.

The local unit may enter into any contracts or agreements to implement the refunding program, including agreements with banking institutions with respect to the application of moneys deposited in a sinking fund for the payment of the refunding bonds at their maturity date to the purchase of obligations of the United States Government or obligations the principal of and interest on which are guaranteed by the United States Government or obligations of any agency or instrumentality of the United States Government without regard to any limitations as to the investment or deposit of moneys.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962. Amended by L.1978, c. 36, s. 3, eff. June 19, 1978.

40A:2-54. Special refunding program

If the local government board shall find that a special refunding program is in the public interest and is based upon a sound financial plan for equalizing or reducing the debt service of a local unit, a refunding bond ordinance may authorize refunding bonds for refunding some or all of any bonds of the local unit which will become due over a period of not exceeding 5 years. Such refunding bond ordinance shall provide for the sale annually during such period, or at such other time or times as the local government board may approve, of blocks or series of refunding bonds to provide funds to pay the bonds and interest to be refunded and such ordinance may also provide for the investment and application of the proceeds of such refunding bonds, pending the maturity or maturities of the bonds to be refunded and for reinvestment or other application of income and realizations upon such investments.

Such investment and reinvestment shall be restricted to (a) purchase and holding of unlimited bonds or notes or other obligations (whether or not interest-bearing) issued or unconditionally guaranteed as to both principal and interest by the United States of America and which mature or which the United States of America is on demand obligated to pay, not later than the end of the respective calendar years of the maturities of the several bonds to be refunded, or (b) purchase and cancellation of any of the bonds to be refunded in the manner or mode of procedure prescribed by the Fiscal Affairs Law.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-55. Filing and effective date of refunding bond ordinance

A certified copy of any refunding bond ordinance shall be filed with the director before final passage, together with a complete statement in form prescribed by the director and signed by the chief financial officer of the local unit as to the outstanding obligations to be paid, funded or refunded by issuance of the refunding bonds. No refunding bond ordinance or any resolution performing, determining or authorizing matters or acts in connection with refunding bonds shall

take effect until the consent of the local government board shall have been endorsed upon a certified copy thereof as adopted.

Any certification or endorsement of consent made by the local government board or by a majority of the members thereof or by the secretary thereof pursuant to its direction as to any issue of refunding bonds shall, after the issuance of such refunding bonds in reliance thereon, be conclusive as to its validity or regularity and shall not be contested in any action or proceeding relating to such refunding bonds instituted after the issuance of such bonds.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962. Amended by L.1978, c. 36, s. 4, eff. June 19, 1978.

40A:2-56. Powers of local government board

The local government board may examine into any estimates, computations or calculations made in connection with any issue of refunding bonds, may require the production of any papers, documents, witnesses or information, may make or cause to be made any audit or investigation and may take any other action which it may deem advisable in connection with any issue of refunding bonds. All powers and duties of the funding commission pursuant to any other law as heretofore exercised and performed by such commission shall be vested in and exercised and performed by the local government board as if such board constituted such commission.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-57. Standards for action by local government board

In considering any refunding bond ordinance presented to it for its consent, the local government board shall have regard to the probable capacity of the local unit to pay at maturity the refunding bonds proposed to be issued, and all notes and bonds and other indebtedness and liabilities of the local unit then outstanding, taking into consideration the assessed and true valuation of taxable property in the local unit, the equitable distribution of the burden of interest and debt redemption charges in connection with such refunding bonds, and the bonds and notes and other indebtedness and liabilities theretofore outstanding or which may necessarily thereafter be incurred. If the local government board shall refuse to endorse its consent upon any such refunding bond ordinance, it shall certify to the local unit a statement of its reasons for such refusal.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-58. Details of refunding bonds

Refunding bonds may be issued in 1 or more series and shall contain the word "refunding" in their title and shall recite that they are issued pursuant to this chapter and shall bear such date or dates, mature at such time or times not exceeding 40 years as may be approved by the Local Finance Board from their date, bear interest at such rate or rates, payable at such time or times, be in such denomination and in such form, either coupon or registered, carry such registration

privileges, be executed in such manner consistent with the provisions of this chapter for bonds of a local unit, be payable at such place or places, and be subject to such terms of redemption, with or without premium, as may be determined by the refunding bond ordinance or by subsequent resolution or resolutions of the governing body.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962. Amended by L.1978, c. 36, s. 5, eff. June 19, 1978.

40A:2-59. Sale of refunding bonds

Refunding bonds may be sold at public or private sale, or may be exchanged for any outstanding bonds or notes to be funded or refunded, pursuant to resolution adopted by not less than 2/3 of the full membership of the governing body, at such price or prices, computed according to standard tables of bond values, as will yield to the purchasers or to the holders of the bonds or notes surrendered in exchange, an income at a rate not to exceed the prevailing market rate to the maturity dates of the bonds sold or exchanged, on the money paid or the principal amount of the bonds or notes surrendered therefor to the local unit. Refunding bonds of any authorized issue or of any authorized maturity may be sold or exchanged as hereinabove provided from time to time and in such blocks as may be deemed advisable. The officer of the local unit delivering any refunding bonds in exchange for outstanding bonds or notes shall report in writing to the governing body at the next meeting thereof as to the principal amounts, maturities and numbers of the refunding bonds so delivered and as to the outstanding bonds or notes received in exchange, which report shall be entered in the minutes of the governing body, and a copy of such report shall be filed within five days thereafter with the director.

Amended 1991,c.75,s.8.

40A:2-60. Sinking or reserve fund; disposition; deposits; investment

Moneys or investments in any sinking fund or reserve fund of the local unit established or held for any obligations to be paid, funded or refunded by issuance of refunding bonds shall, unless the refunding bond ordinance provides otherwise, be applied to the payment or retirement of any such obligations. The refunding bond ordinance may provide that the proceeds from the sale of any refunding bonds shall be deposited in such sinking fund or reserve fund in trust to provide for the payment and retirement of the obligations being refunded at the maturity dates thereof or by redemption prior to the maturity dates and provision may be made for the pledge and disposition of any amounts in excess of the amounts required for such purposes. Money in any such sinking fund may be invested in (a) direct obligations of the United States Government, (b) obligations the principal of and interest on which are guaranteed by the United States Government, (c) to the extent then permitted by law in obligations of any agency or instrumentality of the United States Government, or (d) in certificates of deposit issued by a bank or trust company located in this State if such certificates shall be secured by a pledge of any of said obligations described in (a), (b) or (c) above having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. Nothing herein shall be construed as a limitation on the duration of any deposit in trust for the retirement

of obligations being refunded but which shall not have matured and which shall not be presently redeemable or, if presently redeemable, shall not have been called for redemption.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962. Amended by L.1978, c. 36, s. 6, eff. June 19, 1978.

40A:2-61. Validity of obligations

The power to authorize and issue obligations pursuant to this chapter and the validity of such obligations so issued shall not be affected by or be dependent in any way upon the requirements of any other law or the validity or regularity of any proceedings pursuant to or under which any bonds or notes or indebtedness or liability to be paid, funded or refunded or renewed or extended by the issuance of obligations, were or was authorized and issued, and shall be independent of the power to make improvements or acquire property and shall not be dependent upon or affected by the validity or regularity of any improvement or the acquisition of any property or the authorization therefor, for the financing of which such obligations are issued or are to be issued.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-62. Debt service reserve fund

The governing body, by bond ordinance or resolution, may establish a reserve fund to provide for payment of principal of and interest on any obligations and appropriate thereto any unappropriated funds arising from other than tax sources, or any other moneys made or to be made available by budget or otherwise. A certified copy of such ordinance or resolution shall be filed in the office of the director. The establishment of such fund shall be irrevocable so long as the obligations with respect to which it was created are outstanding or unpaid. Such fund may be invested in the same manner as other moneys of the local unit unless otherwise provided.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:2-63. Application of chapter

Bonds or bond anticipation notes of any county or municipality authorized by county bond resolution or municipal bond ordinance finally passed prior to the effective date of this chapter in accordance with the provisions of the local bond law, constituting sections 40:1-1 to 40:1-88 of the Revised Statutes, as amended and supplemented, may be issued, sold or delivered as if this chapter had not taken effect and in accordance with the provisions either of said law or of this chapter for issuance, sale or delivery of bonds or bond anticipation notes.

Where any other law refers to the issuance of indebtedness in accordance with the provisions of chapter 1 of Title 40, it shall be taken to mean that the indebtedness shall be issued pursuant to this chapter.

This chapter shall not affect or apply to the incurring of indebtedness or the issuance of bonds or notes for school purposes except as other laws may provide for the issuance of such bonds or notes pursuant to this chapter.

L.1960, c. 169, s. 1, eff. Jan. 1, 1962. Amended by L.1964, c. 72, s. 10.

40A:2-64. Effect of amendatory act upon bond ordinance and bonds or notes authorized thereunder

Any bond ordinance passed upon first reading prior to the effective date of this act may be finally adopted as if this act had not taken effect, and bonds or notes authorized by any such bond ordinance or any bond ordinance finally adopted prior to the effective date of this act may be issued, sold or delivered pursuant to the provisions of the local bond law as if this act had not taken effect.

L.1964, c. 72, s. 11.